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# Final report of the Ad Hoc Working Group on Trading Opportunities in the New International Trading Context

As adopted at its second session,
held at the Palais des Nations, Geneva,
from 5 to 8 February 1996

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UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

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UNITED NATIONS

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# I. INTRODUCTION

## A. Mandate

1. The Ad Hoc Working Group on Trading Opportunities in the New International Trading Context was established by the Trade and Development Board in its decision 415 (XL) of May 1994. According to its terms of reference, which are reproduced in annex II, the mandate of the Working Group contained four substantive items, namely:

(a) To identify new trading opportunities arising from the implementation of the Uruguay Round Agreements, in particular sectors and markets, with a view to enhancing the ability of developing countries, in particular the least developed countries, and countries in transition concerned to take full advantage of such opportunities;

(b) To enhance the understanding of the implications of the new rules deriving from the Uruguay Round Agreements and their follow-up, and to identify where and how developing countries and economies in transition concerned could be assisted to:

(i) Make use of the special clauses of the Final Act providing differential and more favourable treatment; and

(ii) Implement and benefit from the commitments undertaken;

(c) To analyse the modalities to give effect to the decisions on special provisions for least developed countries as contained in the Final Act;

(d) To identify areas in which technical cooperation should be strengthened.

2. The Working Group was instructed to take into account the Trade and Development Board's in-depth analysis and assessment of the outcome of the Uruguay Round. In its agreed conclusions 419 (XLI) of September 1994, the Board requested UNCTAD to conduct "more policy analysis", "particularly in identifying the problems and opportunities for developing countries in key sectors such as agriculture, textiles and clothing and services, with a view to making concrete proposals", and noted that the activities of the Ad Hoc Working Group would be relevant to these issues.

## B. Sessions of the Group

3. The Working Group held two sessions. Two seminars relating to issues of relevance to the Group were also conducted.

### 1. First session

4. The first session of the Group, held from 9 to 13 October 1995, dealt with items (a) and (c) of its terms of reference. It had before it secretariat reports in documents TD/B/WG.8/2 and Add.1, TD/B/WG.8/3 and Add.1, UNCTAD/ITD/16 and 17 and UNCTAD/ITD/Misc.37. The Group also

benefited from inputs of experts from WTO, FAO and IMF, as well as from NGOs which had been invited to share their views with the Group. This analysis was supported by a presentation of UNCTAD's TRAINS software and database, which permitted a more detailed identification of opportunities at the tariff-line level.

5. The Group's discussion was summarized in the report of the Ad Hoc Working Group on Trading Opportunities in the New International Trading Context on its first session (TD/B/42(2)/3) - TD/B/WG.8/4).

2. Second session

6. To assist the Ad Hoc Working Group in its deliberations on enhancement of the understanding of the implications of the new rules deriving from the Uruguay Round Agreements for developing countries and countries in transition concerned, and to identify how these countries could make use of the relevant provisions on differential and more favourable treatment, a seminar on "contingency protection" agreements was held on 4 December 1995. It involved the participation of a panel of private practitioners who were experienced in defending the interests of exporting countries within the framework of the domestic legislation of importing countries, as well as government officials from developing countries responsible for the institutional aspects of implementation. Details of the discussions of the seminar are reflected in document TD/B/WG.8/CRP.1.

7. In addition, an International Seminar on Technical Cooperation for Trade and Development in the Face of Globalization was hosted by the Government of Switzerland to address the issue of how trade-related technical cooperation should be organized. The report of the seminar was circulated as document UNCTAD IX/Misc.1. The participants expressed their gratitude to the Government of Switzerland for holding the seminar.

8. The second session of the Group, held from 5 to 8 February 1996, dealt with items (b) and (d) of its terms of reference. The Group had before it secretariat reports in documents TD/B/WG.8/6 and TD/B/WG.8/7, as well as the reports on the above-mentioned seminars.

9. The report of the second session is contained in chapter III of the present report. The second session also approved the final report of the Ad Hoc Working Group.

C. Implementation of the work programme

1. Scope of the Group's work

10. The Working Group focused largely on those Uruguay Round Agreements where the ability of developing countries (and in particular the least developed countries) to derive effective benefits from the trading opportunities provided therein required precisely the "enhancement of understanding" which was identified in the terms of reference as a main task of the Ad Hoc Working Group. Consideration by the Group of these issues suggested possible areas for future work. The results of the discussions are reflected in chapter II (Recommendations) of the present report.

2. Documentation

11. The documentation considered by the Group is listed in annex III.

3. Cooperation with other international organizations

12. The Working Group benefited from cooperation from the secretariats of other international organizations, in particular WTO, ITC, UNIDO, FAO, IMF, World Bank, OECD, ITCB and the United Nations regional commissions.

4. Linkage with UNCTAD's technical cooperation programme

13. The work of the Ad Hoc Working Group contributed to and benefited from UNCTAD's technical cooperation programme. For example, regional seminars such as those held in Casablanca in November 1994, in Bangkok in August 1995, in Beirut in October 1995, and at Subic Bay, Philippines, in November 1995 drew upon the background material prepared by the secretariat. The reports and studies prepared by the UNCTAD secretariat were used as supporting papers in the execution of several other national and regional technical assistance projects related to trade.

## II. RECOMMENDATIONS*

### A. Recommendations at the national and international level

14. With a view to allowing all countries, particularly the developing countries, to derive all benefits from improved trading opportunities, all countries should implement fully their Uruguay Round commitments in letter and spirit. Market-access-related commitments with respect to products and services of export interest to developing countries and economies in transition concerned should be implemented, as soon as possible, in particular in agriculture and textiles and clothing. As provided in the Agreement on Textiles and Clothing, resort to the transitional safeguard actions against small suppliers and LDCs should be kept to a minimum.

15. Developing countries and economies in transition concerned seeking accession to the WTO, which are in the early stages of their integration into the international trading system, should be given every opportunity to achieve accession on balanced terms consistent with their trade, financial and development needs. In particular, demands on those countries should not go beyond the provisions of the WTO Agreements and should not include considerations not covered by these Agreements. The "non-market-economy" provisions of trade legislation should be phased out as these countries move to a market economy.

16. The provisions contained in the Marrakesh Declaration and Decisions on Measures in Favour of Least Developed Countries and on Measures Concerning the Possible Negative Effects of the Reform Programme on LDCs and Net Food-Importing Developing Countries should be implemented as early as possible. The provision of flexible application of rules set out in the various agreements and instruments and the transitional provisions of the Uruguay Round for LDCs should be fully implemented.

17. In view of the difficulty developing countries, particularly the LDCs, are facing in adjusting their economies to shifts in market opportunities and to increased competition, consideration should be given to providing adequate international assistance for export capacity-building, enhancement of competitiveness, product diversification, export market diversification, and relief of short-term difficulties in financing imports of basic foodstuffs.

18. Pursuit of the built-in future work programme contained in the various Uruguay Round Agreements should take fully into account the interests of developing countries. The assessment and possible revision of many of the multilateral trade agreements, as provided in the texts of the agreements themselves, should take account of the impact of globalization and the need to ensure that its contribution to the development process is maximized. In this context, the export interests of developing countries should receive special consideration in the future.

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* As adopted at the Ad Hoc Working Group's closing plenary meeting on 8 February 1996.

19. There is an urgent need to continue trade liberalization, including liberalization through a substantial reduction of tariff and other barriers, in particular non-tariff barriers, to trade and the elimination of discriminatory and protectionist practices in international trade relations, and to improve access to the markets of all countries, in particular those of the developed countries, in order to generate sustained economic growth and sustainable development. Additional market access for developing countries, in particular the least developed countries, could be achieved through improvements in GSP schemes.

20. Assistance is required in order to improve the understanding, by developing countries and economies in transition concerned, of the domestic legislation of importing countries implementing the Agreements on Safeguards, Anti-Dumping, and Subsidies and Countervailing Measures. Ways and means for reducing the costs of procedures should be explored, taking into account the special situation of developing countries. In the application of measures taken under any of these Agreements, developed countries should give special regard to the special situation of developing countries. Specific interests of economies in transition concerned should be taken into account. Possibilities for constructive remedies, as provided for by the Agreement on Anti-Dumping, should be explored before applying anti-dumping measures where they would affect the essential interests of developing country Members.

21. Assistance from the international community is required by many developing countries which have only recently introduced, or are in the process of introducing, legislation in these areas and are faced with the challenge of incorporating these Agreements into the framework of their own legal systems, particularly with respect to the development of new expertise and the strengthening of institutions.

## B. Areas for future work

22. It was noted that the implications of globalization for the international trading system will be part of the debate at UNCTAD IX. A deeper analysis of the implications of globalization and liberalization could consider the extent to which the concepts currently governing trade among nations are still valid tools to deal with today's realities. In this context, it was recalled that General Assembly resolution 50/95 of 20 December 1995 invited UNCTAD, at its ninth session, to transmit its assessment on challenges and opportunities arising from the Uruguay Round Agreements from a development perspective to the first Ministerial Conference of the World Trade Organization.

23. UNCTAD should continue to analyse the impact of the implementation of the Uruguay Round Agreements, and follow closely developments in the multilateral trading system, with a view to providing policy-oriented recommendations from a development perspective. This should include an identification and assessment of the new trading opportunities arising, inter alia, from the implementation of the relevant Agreements affecting trade in goods and services to assist developing countries and economies in transition concerned to take full advantage of them; and analysis of the problems of implementation in the developing countries, taking into account the relevant provisions of WTO agreements regarding special and differential treatment.

24. In particular, UNCTAD should continue to analyse trading opportunities presented by tariff reductions, by elimination of export subsidies and non-tariff measures, and by the operation of the mechanisms provided by the multilateral trade agreements such as the Agreements on Agriculture and Textiles and Clothing, so as to enable developing countries and interested countries in transition to benefit fully from such opportunities. In doing so, close attention should be paid to the practical trading opportunities arising from the implementation of the Agreements at every stage.

25. UNCTAD should continue to analyse the implications of the new multilateral rules and disciplines embodied in the Uruguay Round Agreements for the scope of government policy action in developing countries. Taking into account the provisions on special and differential treatment for developing countries contained in the various Uruguay Round Agreements, this analysis should help to identify effective national and international measures, incentives and policies to foster export-oriented growth and industrial development that are consistent with the new multilateral rules. Also, the analysis should identify how developing countries could best utilize the various transitional periods available to them to adjust their policies and strategies - and how they could be assisted - in order to be able to comply with their multilateral obligations. The analyses would also identify elements of future multilateral initiatives aimed at increasing the trading opportunities of developing countries. Further studies should be conducted to analyse the economic impact of the Uruguay Round Agreements relating to anti-dumping, countervailing and safeguard measures.

26. UNCTAD should also continue to analyse issues related to achieving the full integration of economies in transition, as well as other countries, into the world economy, in particular through improved market access for their exports and elimination of any discriminatory tariff and non-tariff measures and further liberalization of their trade regimes, including vis-à-vis developing countries, and recognizes in this respect the importance of open regional economic integration of interested economies in transition among themselves, as well as with developed and/or developing countries, in creating new possibilities for expanding trade and investment.

27. On the basis of the work conducted so far in this Group, UNCTAD should concentrate on the examination of the real challenges facing the developing countries with respect to trading opportunities, which are threefold: first, to continue the process of identifying the trading opportunities achieved in the Uruguay Round to ensure their maximum benefit to developing countries; second, to identify where future multilateral action is necessary to improve such opportunities, including in the context of the built-in agenda of the multilateral trade agreements; and third, to foresee the challenges of key issues of trade and development, including an early warning perspective, in a rapidly changing world.

28. The basic focus of technical cooperation activities, and in particular those of UNCTAD, should be to assist developing countries and economies in transition concerned in meeting the challenges with respect to trading opportunities and in identifying the main issues and policies concerning their integration into the international trading system in terms that would increase their economic benefits and equip them with better capacities to compete in

international trade, while safeguarding their vital domestic developmental priorities and concerns. UNCTAD technical cooperation should help them to improve their policy-making and institutional capacity-building, while also aiming at strengthening their export supply capabilities and supporting their full integration into the international trading system.

29. Donors, in particular UNDP, are urged to consider providing increased financial support for UNCTAD technical assistance to developing countries, particularly the least developed among them, and countries in transition concerned, in order to allow them to take full advantage of new trading opportunities. Technical assistance should be demand-driven and not supply-based. Technical assistance also requires improved coordination of all relevant international organizations. In this connection, special attention should be paid to the recommendations contained in document TD/B/WG.8/7 and its annex.

30. Recent efforts between UNCTAD, WTO and ITC to strengthen their cooperation should be pursued and intensified. In this respect, the agreement between the Secretary-General of UNCTAD and the Director-General of WTO was welcomed. These initiatives should also be extended to other relevant international organizations in order to make best possible use of existing and potential synergies among them.

## III. REPORT OF THE SECOND SESSION OF THE AD HOC WORKING GROUP

### A. Introduction

31. The Ad Hoc Working Group on Trading Opportunities in the New International Trading Context held its second session at the Palais des Nations, Geneva, from 5 to 8 February 1996. In the course of its session, it held three formal plenary meetings and five informal meetings.

Introductory statements

32. The **Deputy to the Secretary-General of UNCTAD** said that the importance of tighter rules in respect of safeguards, anti-dumping and subsidies and countervailing measures had been recognized as far back as UNCTAD VI, and the international community had exerted considerable efforts during the Uruguay Round to establish more precise and applicable rules governing resort to these measures and their faithful application in national legislation, regulations and administrative practices. The secretariat's report (TD/B/WG.8/6) focused on the implementing legislation of a selected group of major trading countries, and its analysis again confirmed that the results were generally positive, since in most cases the most liberal aspects of the legislation had served as a model upon which the others had been aligned. Developing countries which understood those laws, as well as those of their other trading partners, should be able to improve their trading opportunities, though other factors such as cost could also create problems. In that connection, a seminar had been held on 4 December 1995 involving the participation of a panel of private practitioners experienced in defending the interests of exporting countries within the framework of the domestic legislation of importing countries. The report of the seminar was before the Working Group (TD/B/WG.8/CRP.1).

32. With regard to technical cooperation, the International Seminar on Technical Cooperation for Trade and Development in the Face of Globalization, hosted by Switzerland, had recognized that the real world did not permit a division of labour based simply on mandates, but the functions and relevant skills of various organizations should be drawn upon to create de facto centres of excellence. The Seminar had also discussed ways and means of improving the effectiveness and coordination of trade-related technical cooperation between UNCTAD, WTO and ITC, and UNCTAD fully supported its suggestions. In particular a series of actions to enhance cooperation between UNCTAD and WTO had been initiated by the executive heads of both organizations, and UNCTAD and ITC intended to intensify joint action as well. Special attention was being devoted to a joint programme to assist African countries follow up the results of the Uruguay Round.

34. The Uruguay Round Agreements were extremely complex, and while it was evident that the Agreements on Textiles and Clothing, Agriculture, Safeguards, Subsidies and Countervailing Measures and Anti-Dumping Measures provided new trading opportunities for developing countries and countries in transition, the ability of these countries to actually exploit such opportunities was a function of their ability (or the ability of their firms) to manage a series of variables, including the ability to assemble data to support their

positions and an in-depth understanding of the laws of their main trading partners and their functioning. Another striking aspect was the apparent difficulty in applying certain of the concepts and mechanisms contained in these Agreements, which derived from the assumption that production was undertaken on a "national" basis by a "domestic" industry, to the realities of a world characterized by globalized production. The whole question of "origin" might have to be revisited. The question of contradictions between competition policy and anti-dumping legislation had also been raised quite frequently. A third observation was that disciplines in additional areas might be required to supplement the multilateral agreements and to ensure their effective application. For example, Governments were committed not to encourage private measures that had the same effect as the prohibited VERs, but had not accepted obligations to ensure that such measures were eliminated. Another observation related to the difficulties faced by developing countries in implementing these agreements as a result of lack of financial and human resources and the institutions that would be required to make independent rulings on the basis of objective criteria. The situation of the non-WTO members should also be taken into account. These countries did not enjoy the contractual rights of WTO members, and thus did not necessarily benefit from trade liberalization. This problem was particularly acute for countries in transition to a market economy. Finally, it should be noted that most of the Agreements contained an agenda for future review and possible revision and in some cases specifically committed members to future negotiations.

35. The **Chairman** said that the Group should try to determine how to help developing countries and economies in transition to benefit from the differential and more favourable treatment to which they were entitled, as well as to identify areas where assistance was necessary to help developing countries to implement the WTO Agreements. The process of trade liberalization had eliminated protectionist measures such as quantitative restrictions, while customs tariffs had been reduced dramatically and bound against increase. However, these developments in turn had led to a rise in the use of contingency measures or trade remedies, particularly against developing countries. The WTO Agreements established more precise rules governing new and more complex protectionist measures, and one of their goals was to provide increased trading opportunities for developing countries. These new rules should therefore be used to defend market access opportunities through their reflection in the regulations and administrative practices of importing countries. The developing countries must be able to fully understand both the domestic laws of their main trading partners and the new WTO rules in order to use the multilateral trading system to their advantage, but many of them lacked the necessary experience and financial and human resources.

36. The main task of the Ad Hoc Working Group was to prepare a final report containing recommendations to the Committee of the Whole. The debate in the Group illustrated the usefulness of analyses in UNCTAD of issues specific to developing economies and countries in transition with a view to identifying areas where technical assistance was required. Developing countries were also confronted with the task of preparing for an in-built agenda of future negotiations within the framework of several WTO Agreements, and this in-built agenda should also be a priority in considering recommendations for future work.

B. Enhancement of the understanding of the implications of the new rules deriving from the Uruguay Round Agreements and their follow-up, and identification of where and how developing countries and economies in transition concerned could be assisted to: (a) make use of the special clauses of the Final Act providing differential and more favourable treatment; and (b) implement and benefit from the commitments undertaken

(Agenda item 2)

37. For its consideration of this item, the Ad Hoc Working Group had before it the following documentation:

"An analysis of the implications of the new rules deriving from the Uruguay Round agreements on safeguards, anti-dumping, and subsidies and countervailing measures - report by the UNCTAD secretariat" (TD/B/WG.8/6);

"Seminar on Contingency Protection Agreements, 4 December 1995 - report by the UNCTAD secretariat" (TD/B/WG.8/CRP.1);

"UNCTAD Workshop on Identification of Trading Opportunities for Asia-Pacific Developing Countries and Adjustment of Export Strategies to the Post-Uruguay Round Trading Context - conclusions and recommendations" (TD/B/WG.8/CRP.2).

38. The **Chief of the Systemic Issues Section of the International Trade Division**, introducing the item, said that the tightening of the multilateral rules governing resort to "contingency" trade measures, particularly to prevent their abuse as a means of harassment of trade, had been one of the main objectives of the developing countries during the Uruguay Round. However, it had to be acknowledged that the trading opportunities resulting from the Uruguay Round Agreements were pursued in the context of the domestic legislation of the importing country, and an understanding of such legislation was therefore needed for developing countries and economies in transition. The implementation of the Uruguay Round Agreements was still at an early stage, and the secretariat's study (TD/B/WG.8/6), based on an analysis of the legislation of three major trading countries, was only illustrative of opportunities and possible problems. The overall conclusion in the report was that the Uruguay Round Agreements in these areas had gone a long way to improving trading opportunities by providing greater security in market access, particularly for developing countries. The system had become more predictable and transparent, and this had to a large extent been reflected in implementing legislation. He stressed the importance of the Agreement on Safeguards in defining serious injury in a more precise way, and in particular prohibiting voluntary export restraints and other grey-area measures. On anti-dumping, the major result had been to introduce more precise formulations and to improve predictability and security of access. The Agreement on Subsidies and Countervailing Measures had introduced a definition of subsidy, created a category of subsidies which were exempt from countervailing duties and applied a *de minimis* rule, providing flexibility for the developing countries and recognizing the importance of subsidies in the process of

transition to a market economy. These agreements would in general result in increased harmonization in the legislation of WTO members. Developing countries introducing anti-dumping, safeguard and countervailing legislation along the lines pursued by developed countries were faced with the challenge of incorporating these Agreements into the framework of their own legal systems, and this had given rise to problems with respect to strengthening of institutions, the development of new expertise and financial resources. The percentage of cases with restrictive outcomes was usually higher for imports from developing countries than from developed, and this reflected difficulties the developing countries had in effectively defending their interests within this complex set of agreements and implementing legislation. In conclusion, he emphasized the need for technical assistance and noted the specific problems that non-WTO members were facing.

39. The representative of the **Islamic Republic of Iran**, speaking on behalf of the **Asian Group**, said that the Asian Ministers, in their declaration following their meeting in Amman, had called for implementation of the Uruguay Round Agreements in letter and spirit. The changing structure of international trade, together with the increasing development gap between developed and developing countries, made transition efforts costlier and the question of market competition more of an enigma. The Amman Declaration conceived a substantive role for UNCTAD in the areas of trade and development policies. Thus it was appropriate that the Working Group should review the application of various provisions of the WTO Agreements on safeguards, anti-dumping and countervailing measures, subsidies, etc. It was becoming increasingly difficult for developing countries to protect their vital productive sectors, since they lacked resources and the capacity to gain access to information. The complex procedures and practices involved in the application of measures by the industrial countries necessitated further scrutiny through an efficient and flexible mechanism within the framework of multilateral negotiations. The spirit of the Uruguay Round Agreements, namely equality, transparency and non-discrimination, would be at stake if no concrete measures were taken to protect the developing countries against the adverse effects of the externalities which were beyond the scope of WTO provisions. UNCTAD had a definite role to play in the review and assessment of these provisions, with the full participation of developing countries.

40. Since the number of non-WTO member countries was greatest in Asia, his group was obliged to point out that non-WTO members were liable to face stricter obligations in a more complex set of trade-offs.

41. The Uruguay Round Agreements had crowned an era of consensus-building, but the dynamism of the global economy and recently emerging modes of behaviour meant that dynamism and flexibility would be required in dealing with WTO provisions. Thus, complex situations and restrictions which went beyond the WTO Agreements could be an ongoing topic for UNCTAD and one which added more substance to its role in the current context.

42. Finally, UNCTAD's technical cooperation should not be limited merely to enhancing understanding of the Uruguay Round. It should also involve improvement of policy-making and institutional capacity-building, thus helping to improve market access and competition in a stable and transparent environment.

43. The representative of the **European Community** welcomed the fact that, in document TD/B/WG.8/6, the UNCTAD secretariat had taken the view that the rule-making agreements of the Uruguay Round improved trading opportunities for developing countries. However, the documentation prepared by the UNCTAD secretariat gave rise to a number of problems. First, it was to be regretted that the secretariat's report on the seminar on "contingency protection" agreements (TD/B/WG.8/CRP.1) had been issued so late. Moreover, while the very detailed analysis of the agreements on safeguards, subsidies and countervailing measures and anti-dumping practices was of interest, the usefulness of some aspects of the analysis for the work of the Ad Hoc Working Group was open to question, in particular the issue of the domestic legislation of major trading partners. The yardstick for determining the international legality of any concrete measure taken against imports was not that country's national legislation, but the multilateral agreement covering the matter, and both the concrete measure and the national legislation had to be consistent with the provisions of the agreement. It must therefore be asked whether a knowledge of the details of national legislation would help developing countries seize the trading opportunities available to them.

44. In its report TD/B/WG.8/6, the secretariat questioned the assumption that production was an activity that took place within national frontiers, and the question therefore arose as to what extent the concept of trade among nations remained a valid tool in dealing with today's realities. With regard to dumping, the concept of dumping was not based on a comparison between prices offered by producers from different countries, but on a comparison between prices offered by the same producer on different markets. In addition, the reported increase in the application of trade contingency measures was not sufficiently substantiated by the data in the tables presented, as the latter provided data for one year only. On the other hand, there was no correlation between the market share of a given country and the number of trade defence measures taken against imports from that country. It would have been useful if the document had also included an examination of the benefits developing countries might reap from their own commitments. Concerning the implementation of anti-dumping and countervailing measures by developing countries in particular, while it was true that these measures required substantial financial and human resources to carry them out, it was also true that more developed developing countries had no problems at all in defending their trade interests. Finally, the description of the situation of non-WTO members in the secretariat's documentation was open to question.

45. The representative of **China** said that the new rules on safeguards, anti-dumping, subsidies and countervailing measures deriving from the Uruguay Round Agreements to a certain extent improved the export environment of developing countries, provided better conditions of market access for developing countries, and increased predictability and transparency. Rules had been clarified and tightened, particularly with regard to the duration of "contingency protection measures", *de minimis* rules, reviews, sunset provisions and the application of the "injury test" to WTO members in countervailing duty investigations. While the Uruguay Round Agreements thus represented important contributions to the promotion of the world economy and trade, there nevertheless remained areas of concern to developing countries. In some cases, certain provisions might offset the benefits, for instance provisions on the "cross-cumulation" of injury of subsidized and dumped

imports and the "specificity" of subsidies. He called on the major developed countries to abstain from resorting to protectionist measures in the guise of anti-dumping and countervailing measures.

46. Many developing countries continued to be treated as "non-market economies", despite the progress made in their economic and trade reforms, and a high anti-dumping margin was imposed on products from these countries as a result of so-called "surrogate" country provisions in their national legislation. Non-WTO members would not necessarily benefit from the improved rules and might continue to face trade restrictions based on discriminatory criteria. He hoped that the countries concerned would apply these new rules on a de facto basis to those countries that were in the process of acceding to WTO.

47. In view of the increasing globalization and liberalization of the world economy and trade and the increase in trade disputes, he proposed that the international community should initiate studies and discussions as to the strengthening of competition policy in order to seek a fair solution to trade problems, instead of the abuse of so-called "trade remedies" such as anti-dumping measures in a negative manner. On technical cooperation, China agreed with the opinions expressed in document TD/B/WG.8/7 and expected the developed countries to provide financial support for multilateral and bilateral cooperation designed to promote mutual understanding between countries.

48. The representative of **Bangladesh** said that the Uruguay Round Agreements on Safeguards, Anti-dumping and Countervailing Measures were described as having provided more predictable and transparent rules for the international trading system and helping to avoid trade tensions and disputes. However, the operational aspects of these rules were not easy to tackle, and the transitional costs involved in making the necessary adjustments would be quite substantial. Small and medium-sized firms in developing countries would face difficulties in defending their interests because of the complexities of the system and the cost of investigation proceedings. Lack of information and expertise and unfamiliarity with the procedures of importing countries had put many developing countries at a disadvantage without regard to conducting a reasonable effective defence. As shown in the secretariat's documentation, anti-dumping procedures in developed countries were extremely expensive, especially for LDCs, since substantial financial and human resources were required to carry out detailed investigations. In a case involving the Republic of Korea, for example, an anti-dumping action against exporters of sweaters had lasted four years and cost the exporters $4 million; by the time they had won their case, more than 30 per cent of them had closed down or left the industry (TD/B/WG.8/CRP.1, pp. 62-64).

49. Technical assistance alone might not be able to solve the problems of the poorer countries, but their overall situation needed to be strengthened. The thrust of the paper on technical assistance was on educating the developing countries to comply with the new trade regime, but priority should be given to capacity-building, product development and marketing and diversification, so as to help these countries increase their share of world trade. Developing countries' experts should be utilized in technical assistance programmes to

make them more relevant and cost-effective, and the success of technical assistance programmes should be judged on whether they helped achieve a greater share of world market for the countries concerned.

50. The implementation of the Uruguay Round Agreements was at an early stage, and further studies should be conducted by independent experts to examine the operation of anti-dumping, countervailing and safeguard measures. A comprehensive examination should also be made of the impact of all Uruguay Round Agreements.

51. The representative of **Cuba** said that the work of the Group would help developing countries acquire a better knowledge of the possibilities of taking the fullest advantage of the provisions of the very complex agreements resulting from the Uruguay Round, and even gear them towards future negotiations. The implementation of the Uruguay Round Agreements in developing countries required a national infrastructure which in most of them had been inexistent prior to the launching of WTO, hence the importance of support and assistance from the international community. Furthermore, in some instances the implementation of these Agreements required new legislation, and in others changes had to be made in existing legislation to make it compatible with the new rules. This implied that developing countries would first have to deal with domestic action before they could envisage taking advantage of the possible trading opportunities deriving from the agreements. In this regard, developing countries would thus be in a position to participate fully in the international trading system, and hence to take advantage of the emerging trading opportunities, if they received all the support they needed to make progress in their domestic procedures.

52. With respect to technical assistance, given the new and stricter rules of the post-Uruguay Round trading system and the almost insuperable problems created for developing countries by the complexity of these agreements, training and technical assistance provided by the competent organizations, in particular UNCTAD, were of the utmost importance. The present needs for technical cooperation in the area of international trade were vast and the resources limited, and she therefore urged international organizations having a similar mandate to join their professional capacities in order to foster a wide programme of technical assistance.

53. Her country had an unjust blockade imposed on it by the United States. This would have the effect of preventing her country from taking full advantage of the trading opportunities afforded by all the members of the organization.

54. Finally, she expressed the hope that UNCTAD IX would approve a concrete mandate in favour of the developing countries in particular. To that end, delegations at the present session had an obligation to prepare a report which would enable Ministers to understand the important tasks carried out and to plan for the future.

55. The representative of **Zimbabwe** welcomed the secretariat's analysis and discussion of national legislation enacted in implementation of the Uruguay Round Agreements, particularly those that dealt with trade defence

instruments. Firstly, the WTO Agreements were contractual in nature and were to be implemented domestically, and thus countries had to know how the domestic legislation would affect their imports. Secondly, the analysis would make it possible to see if importing countries were complying with disciplines. Thirdly, if it became necessary to pursue any dispute settlement procedure, an understanding of national legislation would be necessary. With respect to non-WTO members, there was no country that did not want to get involved in the processes of globalization in the world economy. Finally, while he fully agreed with the importance of studying the advantages to be derived by developing countries from the multilateral trade agreements, he underscored the importance of studying any side-effects that might occur in the process of structural adjustment.

## C. Identification of areas in which technical cooperation should be strengthened

(Agenda item 3)

56. For its consideration of this item, the Ad Hoc Working Group had before it the following documentation:

> "The new international trading context: identification of areas for strengthened technical cooperation - report by the UNCTAD secretariat" (TD/B/WG.8/7);
>
> "Report of the International Seminar on Technical Cooperation for Trade and Development in the Face of Globalization" (UNCTAD IX/Misc.1).

57. The **Chief of Systemic Issues Section, International Trade Division**, introducing the item, said that, when looking at technical cooperation requirements, it was important to take into account the scope and terms of reference of the Working Group. Specific areas for technical cooperation included: (a) strengthening national policy-making capacities with regard to market access in goods and services, taking account of the implications of new multilateral rules; (b) institutional capacity-building and human resource development to support both the implementation of the various Uruguay Round Agreements and effective participation of countries in defending their interests and rights and making use of the opportunities presented; (c) training in a number of trade-related areas, including the use of UNCTAD-based training programmes such as TRAINFORTRADE; (d) more effective management of trade and trade-related information and data; (e) more effective participation in multilateral and regional frameworks and negotiating processes such as accession to WTO, in current and future negotiations and in new and emerging issues.

58. With regard to the delivery of technical cooperation and its funding, specific emphasis had been placed in the secretariat's report on the complementarities among various organizations active in the area of trade. In this context, the arrangement agreed upon between the Secretary-General of UNCTAD and the Director-General of WTO also covered joint activities in the area of technical cooperation.

59. The representative of **Switzerland** said that the secretariat's report on technical cooperation reflected the scope and magnitude of technical cooperation requirements in the field of trade policy and trade activities. It highlighted the need for an integrated and coordinated approach in designing technical cooperation programmes and implementing specific projects.

60. Concerning the International Seminar on Technical Cooperation for Trade and Development in the Face of Globalization, hosted by Switzerland, his authorities were satisfied that the results and objectives of the Seminar had been fulfilled, namely: to assess the requirements for trade-related technical assistance against the backdrop of the new economic and trading environment; to assess present institutional sources of technical assistance; and to examine ways to improve the adequacy between technical cooperation demand and supply, as well as to assess how to enhance the effectiveness and efficiency of trade-related technical cooperation programmes. As a follow-up to the Seminar, it was expected that the Chairman would be expected to present proposals for future-oriented action during the preparatory process leading to UNCTAD IX.

61. With regard to the Seminar's conclusions, there was a need to define and delimit trade-related technical cooperation. It did not encompass assistance to implement economic reforms, financial assistance to the private sector or investment promotion. It did encompass assistance to strengthen recipient country capacity to formulate and negotiate commercial policy, to improve the ability of the private sector to do export-oriented business and to enhance access to foreign markets. In the interest of effective and efficient delivery of trade-related technical cooperation, it seemed appropriate and necessary to enhance coordination among all interested parties through increased transparency, communication, and the sharing of analyses and experiences. This called for the establishment of flexible and informal "centres of excellence" and the sharing of "best practices".

62. Switzerland had been reviewing its trade-related technical cooperation policy in the light of the new trading environment, and it intended to increase its efforts and support under three programmes, namely institutional and human resources capacity-building for trade policy formulation and implementation; improving the efficiency of trade operations, including for instance trade-related services and marketing and selling in global markets; and promoting imports to Switzerland. To implement these programmes efficiently, Switzerland intended to adopt an integrated and comprehensive approach at a country level. UNCTAD, WTO and ITC certainly had a key role to play in this field as leading agencies for trade-related technical cooperation, and other international and regional agencies were to be included as well. Switzerland was considering ways of promoting this approach in the preparatory process for UNCTAD IX.

63. The representative of **Colombia**, speaking on behalf of the **Latin American and Caribbean Group**, said that, for the countries in the region, contingency trade agreements were having an increasing impact on their exports. For developing countries to take advantage of trading opportunities deriving from clearer and stricter disciplines required continuous efforts, within the framework of the domestic legislation of major trading partners. Moreover, the implementation of the Uruguay Round Agreements involved not only

strengthening institutions but also improving training and skills. It was expected that the transparency and greater predictability in the new rules resulting from these agreements would improve trading opportunities for developing countries.

64. Her Group had welcomed the holding of a specialized seminar on these issues on 4 December 1995, and the Ad Hoc Working Group should concentrate on considering the recommendations to be submitted to the Trade and Development Board as to the future work of UNCTAD on this issue. In this connection, she recalled that the Caracas Declaration, adopted by Latin American and Caribbean Ministers in January 1996, recognized the essential role of UNCTAD in the area of trade and development and proposed the establishment of a Trade Commission.

65. The opportunities deriving from the Uruguay Round multilateral trade agreements could only be fully exploited if the major trading countries observed and applied them fully in letter and spirit. While useful, the two sessions of the Working Group had only served to initiate the necessary analysis, which required further work in UNCTAD. The controversy that had marked the Group's discussions only served to highlight the importance of the issues at stake. In spite of seven years of complex negotiations, it would seem that a process similar to that preceding the Uruguay Round was under way, as the need for multilateral rules for the new trade issues was being argued. It was probable that another Round of negotiations under the aegis of WTO would take place before the year 2000, and the ground should be carefully prepared and developing countries should be assisted in this process.

66. Part of the debate at UNCTAD IX would be devoted to the implications of globalization for the international trading system, and the important work which UNCTAD could undertake with respect to trading opportunities included: (i) continuing the process of identifying the trading opportunities achieved in the Uruguay Round to ensure their maximum benefit to countries in the region; (ii) identifying and defining areas where future multilateral action was required to improve such opportunities, including in the context of the built-in agenda of the multilateral trade agreements; (iii) detecting threats to existing or future trading opportunities and devising remedial action. These three key tasks for UNCTAD should be included in the Working Group's recommendations to the Trade and Development Board. These recommendations should also take into account General Assembly resolution 50/95 in which UNCTAD was invited to transmit its assessment on challenges and opportunities arising from the Uruguay Round agreements from a development perspective to the Ministerial Conference of WTO. To ensure that the benefits of the multilateral trade system promoted sustained economic growth and sustainable development, the resolution had also emphasized the need for continued review and evaluation of the implementation of the Uruguay Round agreements.

67. UNCTAD's technical assistance programmes should be more focused to assist developing countries to deal directly with the challenges they faced. In this regard, her Group subscribed to the ideas contained in the report of the International Seminar on Technical Cooperation for Trade and Development in the Face of Globalization, in particular that the organizations dealing with these issues should combine their efforts, and stressed the complementarity of the work carried out by UNCTAD and WTO. UNCTAD should continue with its important tasks in analysing trends in international trade from a development

perspective, identifying possible areas for future trade negotiations, serving as the forum for debate and consensus-building on these issues, and supporting the developing countries in these negotiations. Her Group was pleased to note that the Secretary-General of UNCTAD and the Director-General of WTO had agreed to enhance cooperation between the two organizations, and hoped that this would definitively resolve the issue of duplication.

68. The representative of the **Russian Federation** commended the secretariat's report on technical cooperation and recalled General Assembly resolution 50/95, which contained several substantive provisions related to the expansion of UNCTAD's mandates, including technical cooperation. He broadly supported the recommendations and conclusions of the secretariat's report, particularly the recommendations on UNCTAD's technical cooperation activities aimed at supporting countries acceding to WTO. UNCTAD's technical cooperation in this area was efficient and result-oriented.

69. In the context of UNCTAD IX, new and emerging issues on the international trade agenda (e.g. trade and environment, trade and investment, trade and competition policy) should be considered in UNCTAD, inter alia in terms of assisting interested countries in preparing for possible negotiations on these issues in WTO and elsewhere, and also with a view to contributing to international consensus-building. These new issues should become important aspects of UNCTAD's future work. He supported the secretariat's recommendation to focus trade-related technical cooperation on country-specific needs, though regional and more general approaches were also pertinent in appropriate cases, for example for countries with similar interests.

70. While there was a clear trend towards a contraction of financial resources for technical cooperation, he nevertheless stressed his country's position that UNDP priorities should include trade policies and other trade-related issues within UNCTAD's competence. As to further financing of trade-related technical cooperation in UNCTAD, a number of proposals had emerged from the International Seminar on Technical Cooperation for Trade and Development in the Face of Globalization. In particular, attention could be given to the idea of establishing an informal and flexible coordinative mechanism for consultations on trade-related technical cooperation with the participation of recipient Governments, donor agencies and executing organizations (i.e. UNCTAD, WTO and ITC) at an appropriate working level. The basic objective of such a mechanism would be to coordinate technical cooperation on the basis of the priorities of recipient Governments and the requirements of donor agencies. This would also help to eliminate duplication and overlap in these activities.

71. Finally, he commended the results achieved during the recent meeting between the Secretary-General of UNCTAD and the Director-General of WTO as a promising prelude for future intensive cooperation between these two organizations.

72. The representative of **Japan** said that he basically shared the views expressed in the conclusions and recommendations of the secretariat's report on technical cooperation (TD/B/WG.8/7). He emphasized in particular the importance of those technical cooperation activities which facilitated the

development of human resources and the promotion of transfer of technology in the developing countries in the context of their implementation of the Uruguay Round results.

73. He pointed out the importance of UNCTAD in providing technical cooperation to support developing countries in their cooperation with other organizations and agreed that technical cooperation should be further elaborated after UNCTAD IX.

74. Japan had provided technical cooperation to numerous developing countries in a wide range of fields. It was implemented flexibly and promptly in response to the needs of developing countries. Japan was steadily expanding the scale of its technical cooperation, and the amount provided had risen to US$ 2.1 billion in 1992 and US$ 2.6 billion in 1993.

75. As to technical cooperation in the field of trade and development, Japan attached importance to the role of trade in the development process and had extended cooperation such as the dispatch of experts, the acceptance of trainees and project-type cooperation in this field. For the specific purpose of the implementation of Uruguay Round results by the developing countries, Japan had contributed to the technical cooperation activities of WTO since 1993, and it would try to continue this cooperation in years to come.

76. The representative of **Hungary** emphasized that there existed major differences among economies in transition in their level of integration into the world economy, as well as among their specific needs in this context, and that was why the terms of reference of the Ad Hoc Working Group referred to "countries in transition concerned". Unfortunately, this had not been reflected in the conclusions and recommendations of the secretariat, and he requested that the proper wording of the terms of reference be followed in the final outcome of the Working Group.

77. He also recalled that the agreed annotations to the provisional agenda for UNCTAD IX specified the country coverage as "interested economies in transition" in paragraphs dealing with the role of UNCTAD in the context of the integration of countries into the world economy and the international trading system. He expressed the hope that this sophisticated approach would be followed in the preparatory process for UNCTAD IX.

78. The representative of **Bangladesh** said that the secretariat's paper on technical assistance was general in nature, and there was no quantitative estimate of the assistance needed and by whom it should be provided. Seminars and workshops given to Geneva-based diplomats had limited value. What was needed was country-specific technical assistance delivered at the appropriate point. He also emphasized the importance of the cost effectiveness of modalities of delivery of technical assistance, which could only be ensured through untied assistance not linked to predefined projects designed by donors. The use of experts from developing countries would also promote cost effectiveness. Few developing countries were in a position to take loans from multilateral financial institutions for technical assistance, since that would further aggravate their debt burden. It would be important to evaluate technical cooperation with a view to ensuring that funds were used to serve the desired purposes, and UNCTAD IX should take a hard look at devising a

meaningful programme based on the demand for assistance and not supply-bound. Finally, technical assistance could not solve the problems of developing countries and could not replace the more substantive support that the developing countries needed.

### D. Action by the Ad Hoc Working Group

79. At its closing plenary, on 8 February 1996, the **Ad Hoc Working Group** adopted its recommendations. (For the text of the recommendations, see chapter II above.)

80. The Group also decided to annex the Chairman's summary of main findings and conclusions to its report. (For the Chairman's summary, see annex I.)

81. The representative of the **United States of America** said that his country reserved its position on the entire document emanating from the meeting. It was extremely disappointed with the outcome of the meeting, since the Working Group, with the secretariat's help had exceeded its mandate at every step of the way, while at the same time ignoring areas that should have been well within its mandate. The first session of the Working Group had yielded absolutely no agreement whatsoever, and even the Chairman's non-binding summary had been the subject of serious dispute. Despite the fact that several delegations, including his own, had stated that that summary could not be used as a basis for any agreement, the document prepared for the second session of the Group had passed off as fact the idea that agreement had been reached on many ideas. His delegation and others had tried to bring the negotiations more into line with reality, but the Group had started its discussions on the basis of a fundamentally flawed document which bore no relationship to the reality of the Group's mandate or discussions. If the initial draft text was unsound, then the conclusions could only be unsound, since a word-by-word drafting exercise provided no opportunity to make the fundamental changes necessary. He would be embarrassed to have his delegation associated with the exercise which had just been completed and which provided plenty of ammunition to critics of UNCTAD wishing to ridicule the conduct of work in the organization.

82. The representative of **Japan** said that his delegation had no reservations about the recommendations that the Working Group had just adopted, and it accepted the structure of the Group's report in a spirit of cooperation. However, it reserved its position on the Chairman's summary of main findings and conclusions, since those findings and conclusions contained elements that it could not accept.

83. The representative of **Switzerland** said that his delegation had participated actively in the debate and accepted the recommendations adopted by the Working Group without reservations. While his delegation was not happy with every single one of them, he considered this to be part of the normal give and take in a negotiating process. However, he regretted that there had been no time left to discuss the part of the final report presented as a "Chairman's summary". This paper, prepared by the secretariat as a basis for a negotiated text, was one-sided, fundamentally flawed and did not reflect the discussions. His delegation in no way considered the summary of main findings and conclusions as a basis for future work.

84. The representative of **Peru**, speaking on behalf of the **Latin American and Caribbean Group**, thanked the secretariat for the preparation of documentation for the Working Group and welcomed the fact that the Group's recommendations had been adopted by consensus.

85. The representative of the **Islamic Republic of Iran**, speaking on behalf of the **Asian Group**, said that his delegation was not totally satisfied with the results of the Group's work, but in a spirit of compromise it had accepted many of the points made by the other Groups. It was therefore surprised that some members were not satisfied with the results. His delegation thanked the secretariat for the excellent documentation it had prepared for the Group, and it hoped that the results of the Group's work would be properly reflected in the deliberations of UNCTAD IX.

86. The representative of **China** said that the Working Group had accomplished its task and that the achievements of the meeting would be significant for UNCTAD IX. Some reservations had been expressed by a few delegations which had participated actively in the Group's discussions, and that was regrettable.

87. The representative of **Ethiopia** said that his delegation had reservations concerning the final report of the Ad Hoc Working Group, since it would have preferred the summary of main findings and conclusions to be discussed, agreed upon and incorporated into the body of the report. However, he was confident that, in the work of UNCTAD IX, especially as it related to LDCs, the findings and conclusions would be given due consideration.

## E. Organizational matters

### 1. Opening of the session

88. The second session of the Ad Hoc Working Group on Trading Opportunities in the New International Trading Context was opened on 5 February 1996 at the Palais des Nations, Geneva, by the Chairman of the Group.

### 2. Officers

89. The officers of the Ad Hoc Working Group at its second session were as elected at its first session, namely:

| | | |
|---|---|---|
| Chairman: | Mr. Seung Ho | (Republic of Korea) |
| Vice-Chairmen: | Mr. M. Zewdie Michael | (Ethiopia) |
| | Ms. V. Fonseca | (Venezuela) |
| | Mr. W. Prodjowarsito | (Indonesia) |
| | Mrs. J. Wright | (United Kingdom) |
| | Mr. S. Mikhnevidtsh | (Belarus) |
| Rapporteur: | Mr. M. Nishioka | (Japan) |

## 3. Adoption of the agenda and organization of work

(Agenda item 1)

90. At the opening plenary meeting of its second session, the Ad Hoc Working Group adopted the provisional agenda for the session (TD/B/WG.8/5). The agenda was thus as follows:

1. Adoption of the agenda and organization of work

2. Enhancement of the understanding of the implications of the new rules deriving from the Uruguay Round agreements and their follow-up, and identification of where and how developing countries and economies in transition concerned could be assisted to:

   (a) Make use of the special clauses of the Final Act providing differential and more favourable treatment; and

   (b) Implement and benefit from the commitments undertaken

3. Identification of areas in which technical cooperation should be strengthened

4. Other business

5. Adoption of the final report of the Ad Hoc Working Group to the Trade and Development Board.

## 4. Adoption of the final report of the Ad Hoc Working Group to the Trade and Development Board

(Agenda item 5)

91. At its closing plenary, on 8 February 1996, the Ad Hoc Working Group adopted its draft report (TD/B/WG.8/L.3) and authorized the Rapporteur to complete the text of the report in the light of the proceedings of the closing plenary. With regard to the structure of the report, the main body of the report would consist of the introduction, the recommendations of the Group and the report of its second session.

## Annex I

## CHAIRMAN'S SUMMARY OF MAIN FINDINGS AND CONCLUSIONS

### A. Implications of the new rules deriving from the Uruguay Round agreements, and identification of how developing countries and countries in transition could be assisted to make use of differential and more favourable treatment and to implement and benefit from the commitments undertaken

1. It was recognized that, in general, the Uruguay Round Agreements on Safeguards, Anti-Dumping, and Subsidies and Countervailing Measures would improve trading opportunities by providing considerably greater security of market access. The multilateral trading system was thus becoming more predictable and transparent in those areas where the absence of international consensus and workable rules and procedures had given rise in the past to frequent trade tensions and disputes. This would include the removal of "grey-area" measures, the setting of time-limits on the duration of safeguard actions, clarified and tightened rules with respect to serious injury, *de minimis*, negligibility, review, sunset provisions, setting of precise numerical standards (i.e. "standing" and the "5 per cent rule"), the application of "injury test" in countervailing duty investigations to all WTO members, etc. However, certain provisions remained which could pose difficulties for the full exploitation of trading opportunities for developing countries, e.g. "quota modulation", "cross cumulation", and the exclusion of "captive production" in the determination of the domestic production. Some important issues remained outstanding, such as "anti-circumvention" measures.

2. Trade opportunities resulting from these Agreements were defended primarily in the context of the application of domestic legislation of the importing country concerned, which involved assessments of economic criteria such as "injury", and "dumping", investigatory procedures, administrative and judicial practices, and review procedures. The efforts to establish greater precision and predictability in the rules with a view to facilitating trade had also had the result of increasing their complexity, leading to burdensome procedures and costs, and thus the costs of defending the interests of small suppliers in the context of the domestic law of the importing country were often prohibitive.

3. Another major concern of the developing countries was that these improved rules did not effectively inhibit protectionist interests from initiating such actions. Firms from developing countries with relatively less developed administrations, incomplete knowledge of laws, regulations and administrative practices of importing countries, and less expertise in dealing with dumping, countervailing duty and emergency safeguard cases were at a disadvantage in terms of deriving full benefit from these procedures and rules. This created particular problems for them in effectively defending their rights and interests in the context of these agreements and the relevant legislation, and also in implementing their respective obligations. For example, the mere initiation of such actions could block exports as importers immediately switched to other sources. In addition, the fees paid to legal counsel for time-consuming procedures were often prohibitively high for

developing countries. As a result, some exporters from developing countries were persuaded to withdraw from markets without having effectively defended their interests and made full use of their rights under the multilateral trade agreements, as well as under domestic legislation.

4. With increased trade liberalization and the rapid opening of their markets, the Governments of developing countries had been under increased pressure to take actions under these agreements. It was recognized that the implications of the Uruguay Round Agreements would require developing countries to set up independent institutions, establish objective criteria and adopt procedures to ensure "due process". In many cases this involved not only new legislation but also a significant change in attitudes with respect to seeking political solutions to trade problems. While developing countries could bring their national legislation into conformity with the Uruguay Round Agreements, their correct utilization would be hampered by lack of resources and experience, which often left them open to successful challenges on procedural grounds, even when the actions were justified. The importance of technical assistance in learning the skills and methodology to be followed in the investigating proceedings by the authorities in the developing countries was highlighted with a view to enabling them to introduce effective legislation and to applying procedures consistent with the requirements of the Uruguay Round Agreements.

5. The ability of developing countries and economies in transition concerned to actually exploit new opportunities was a function of their ability (or the ability of their firms) to manage a series of variables, including the ability to assemble data to support their positions and an in-depth understanding of the laws of their main trading partners and their functioning.

6. The Ad Hoc Working Group did not have sufficient time to consider other new rules of relevance to trading opportunities in goods. The Ad Hoc Working Group did not examine trading opportunities in the services sectors, as it was considered that this task was being carried out by the Standing Committee on Developing Services Sectors: Fostering Competitive Services Sectors in Developing Countries. The final report of the Committee (TD/B/42(2)/2) was noted by the Ad Hoc Working Group.

## B. Technical cooperation requirements

7. The Ad Hoc Working Group considered that, in order to facilitate the integration of developing countries and economies in transition concerned into the international trading system and their adjustment to the outcome of the Uruguay Round and to enhance their ability to draw maximum benefit from the new international trading context, increased technical cooperation would be required in four broad areas, namely: (a) improving national policy-making, including through measures aimed at making full use of the new trading opportunities and of the new possibilities for action to defend a country's interests and rights; (b) building up institutional and human resource capacities; (c) strengthening participation in the multilateral and regional frameworks and negotiations processes; and (d) enhancing export supply capabilities.

8. Technical cooperation in the area of improving national policy-making, including identification and exploitation of trading opportunities, would need to be oriented towards the following activities: first, identification of products and market access conditions, in terms of customs tariffs, in the light of actual and potential export interests of individual countries or groups of countries (the subregional level); second, following closely the operation of the mechanisms set up to put into effect the relevant agreements on agricultural products and in textiles and clothing with a view to anticipating new market opportunities (for instance, in those agricultural products subject to minimum access commitments, and in those textile and clothing products included in each integration phase, including the use of transitional safeguards in both agreements); third, providing assistance in connection with the problems faced by the countries which were not members of WTO.

9. Analyses, information databases and software (such as the TRAINS system) for identifying trading opportunities in particular sectors and markets were considered particularly useful.

10. As to the implications of the new rules, the following three subjects required attention: (a) strengthening participation in the multilateral trading system and multilateral negotiations, and adapting national legislation to the new multilateral rules and disciplines; (b) creating or strengthening a trade policy community comprising, in particular, the private sector and its organizations, legal and consultative firms, consumer organizations, and academic and research institutions, and integrating it into national trade policy formulation process; and (c) improving governmental mechanisms for trade policy coordination.

11. The need to strengthen and improve institutions and create a variety of skills in developing countries and in interested economies in transition concerned became even more urgent given the growing complexity of multilateral trade agreements and their scope, not to mention the difficulties associated with domestic economic and trade reforms. Three areas stood out as core activities: (a) trade-supporting institutional structures; (b) training; and (c) management of trade and trade-policy-related information and data.

12. Finally, accession to WTO was an important step in the integration of individual countries into the international trading system. The complexity and sensitivity of the WTO accession negotiations presented a major challenge both for the acceding countries and the WTO itself. Technical cooperation to support the WTO accession process of individual countries therefore needed to be intensified.

## Annex II

### TERMS OF REFERENCE OF THE AD HOC WORKING GROUP ON TRADING OPPORTUNITIES IN THE NEW INTERNATIONAL TRADING CONTEXT

Pursuant to General Assembly resolution 1995 (XIX), as amended, and to a New Partnership for Development: the Cartagena Commitment adopted at the eighth session of the United Nations Conference on Trade and Development, the Trade and Development Board, having undertaken the mid-term review and evaluation of the work programme of the intergovernmental machinery of UNCTAD, called for by UNCTAD VIII, decides to establish an Ad Hoc Working Group on Trading Opportunities in the New International Trading Context, with the following terms of reference:

1. To identify new trading opportunities arising from the implementation of the Uruguay Round agreements, in particular sectors and markets, with a view to enhancing the ability of developing countries, in particular the least developed countries, and countries in transition concerned to take full advantage of such opportunities;

2. To enhance the understanding of the implementation of the new rules deriving from the Uruguay Round agreements and their follow-up, and to identify where and how developing countries and economies in transition concerned could be assisted to:

   (a) Make use of the special clauses of the Final Act providing differential and more favourable treatment; and

   (b) Implement and benefit from the commitments undertaken;

3. To analyse the modalities to give effect to the decisions on special provisions for least developed countries as contained in the Final Act.

4. To identify areas in which technical cooperation should be strengthened.

5. The Working Group shall carry out its mandate under the guidance of the Trade and Development Board and shall take into account in particular the Board's in-depth analysis and assessment of the outcome of the Uruguay Round.

6. The work of the Working Group should complement that of other international bodies while seeking to ensure that no duplication occurs.

7. The Working Group may submit interim reports and shall submit a final report on the results of its work to the Trade and Development Board.

## Annex III

### LIST OF DOCUMENTS

| | |
|---|---|
| TD/B/WG.8/1 | Provisional agenda and annotations for the first session of the Ad Hoc Working Group |
| TD/B/WG.8/2 and Add.1 | An analysis of trading opportunities resulting from the Uruguay Round in selected sectors: agriculture, textiles and clothing, and other industrial products - report by the UNCTAD secretariat |
| TD/B/WG.8/3 and Add.1 | Translating Uruguay Round special provisions for least developed countries into concrete action: issues and policy requirements - report by the UNCTAD secretariat |
| TD/B/WG.8/4 | Report of the Ad Hoc Working Group on its first session |
| TD/B/WG.8/5 | Provisional agenda and annotations for the second session of the Ad Hoc Working Group |
| TD/B/WG.8/6 | Enhancement of the understanding of the implications of the new rules deriving from the Uruguay Round Agreements and their follow-up, and identification of where and how developing countries and economies in transition concerned could be assisted to: (a) make use of the special clauses of the Final Act providing differential and more favourable treatment; and (b) implement and benefit from the commitments undertaken - report by the UNCTAD secretariat |
| TD/B/WG.8/7 | Identification of areas in which technical cooperation should be strengthened - report by the UNCTAD secretariat |
| TD/B/WG.8/8 | Final report of the Ad Hoc Working Group |
| TD/B/WG.8/CRP.1 | Seminar on "Contingency Protection" Agreements, 4 December 1995 - report by the UNCTAD secretariat |
| TD/B/WG.8/CRP.2 | UNCTAD Workshop on Identification of Trading Opportunities for Asia-Pacific Developing Countries and Adjustment of Export Strategies to the post-Uruguay Round Trading Context - conclusions and recommendations |
| UNCTAD/ITD/16 | Implementation of the Uruguay Round Agreement on Agriculture by major developed countries |
| UNCTAD/ITD/17 | Preliminary analysis of opportunities and challenges resulting from the Uruguay Round Agreement on Textiles and Clothing: report by the UNCTAD secretariat |

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|---|---|
| UNCTAD/ITD/Misc.37 | Identification of new trading opportunities arising from the implementation of the Uruguay Round Agreements in selected sectors and markets - opportunities for industrial products in major developed country markets |
| UNCTAD IX/Misc.1 and Corr.1 | Report of the International Seminar on Technical Cooperation for Trade and Development in the Face of Globalization, Ascona, Switzerland, 23-24 November 1995 |

## Annex IV

### ATTENDANCE AT THE SECOND SESSION 1/

1. The following States members of UNCTAD, members of the Ad Hoc Working Group, were represented at the second session:

Algeria
Argentina
Bangladesh
Belarus
Brazil
Bulgaria
China
Cuba
Czech Republic
Ethiopia
Finland
France
Germany
Greece
Guatemala
Honduras
Hungary
India
Indonesia
Iran (Islamic Republic of)
Iraq
Italy
Jamaica
Japan
Malaysia
Mexico
Norway
Peru
Poland
Republic of Korea
Romania
Russian Federation
Sri Lanka
Switzerland
Thailand
Tunisia
Turkey
United Kingdom of Great Britain and Northern Ireland
United States of America
Uruguay
Venezuela
Viet Nam
Zambia

2. The following other States members of UNCTAD, not members of the Ad Hoc Working Group, were represented as observers at the session:

Afghanistan
Albania
Angola
Bolivia
Ecuador
El Salvador
Gabon
Guatemala
Malta
Mauritius
Mongolia
Morocco
Myanmar
Nepal
Nicaragua
Pakistan
Portugal
Qatar
Saudi Arabia
Senegal
South Africa
Spain
Trinidad and Tobago
Yemen
Zimbabwe

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1/ For the list of participants at the second session, see TD/B/WG.8/INF.2. For the list of participants at the first session, see TD/B/WG/8/INF.1.

3. The Economic Commission for Europe was represented at the session.

4. The following specialized and related organization were represented at the session:

Food and Agricultural Organization of the United Nations
World Health Organization
International Monetary Fund
United Nations Industrial Development Organization

The World Trade Organization was also represented at the session.

5. The following intergovernmental organizations were represented at the session:

Agency for Cultural and Technical Cooperation
Arab Labour Organization
European Community

6. The following non-governmental organizations were represented at the session:

General Category

International Chamber of Commerce
International Confederation of Free Trade Unions
International Council of Environmental Law
World Federation of United Nations Associations
Women's International League for Peace and Freedom

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